

1 **SANDRA D. LYNCH, ESQ.**
2 **BROOKS LYNCH & TYDINGCO LLP**
3 C&A Building, Suite 101
251 Martyr Street
Hagatna, Guam 96910

4 *Attorneys for Alice N. Salas*

FILED
DISTRICT COURT OF GUAM
MAY 17 2002
MARY L. M. MORAN
CLERK OF COURT

19

9
10 **IN THE UNITED STATES DISTRICT COURT**
DISTRICT OF GUAM

11 ALICE N. SALAS

12 Plaintiff,

13 vs.

14 JAMES JI ENTERPRISE,
15 JJ PACIFIC DEVELOPMENT
16 CORPORATION, JAMES JI,
and HUANG LEE,

17 Defendants.

CIVIL CASE NO. 02-00002

APPLICATION FOR
DEFAULT JUDGMENT

18 Comes now Plaintiff, Alice N. Salas, and moves, pursuant to Federal Rule of Civil
19 Procedure 55, for Default Judgment against all defendants, jointly and severally. Her Application
20 is more fully supported in the Memorandum of Points and Authorities, the Affidavits submitted
21 herewith, and the pleadings on file with this Court.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 Plaintiff on February 6, 2002, filed a complaint against defendants under Title 28, United
24 States Code [hereinafter 28 USC] Section 1875, et seq., alleging that she was unlawfully
25 discharged from her employment as a result of her federal jury service. Defendant Huang Lee ws
26 served on February 15, 2002, JJ Pacific Development Corporation was served on February 15,
27 2002, Defendant James Ji Enterprise was served on February 15, 2002, and Defendant James Ji
28

1 was served on March 7, 2002. Defendant James Ji's Answer was due no later than March 7;
2 Defendant Huang Lee, JJ Pacific Development Corporation, and James Ji Enterprise Answer was
3 due no later than March 27, 2002. On or about the day Defendants' answer was due, Defendants
4 requested from the Court an additional period of time within which to answer the complaint,
5 which was never served on Plaintiff. The Court granted the extension, for an additional thirty
6 days, or until April 8, 2002. To date, no answer has been filed or received by the Court, nor
7 served on Plaintiff. Plaintiff therefore moves for a Default Judgment against all Defendants,
8 jointly and severally. Under Rule 55 (a),

9 When a party against whom a judgment for affirmative relief is sought has
10 failed to plead or otherwise defend as provided by these rules and that fact
11 is made to appear by affidavit or otherwise, the clerk shall enter the party's
12 default.

13 Under Rule 55 (b), "**Judgment,**"

14 (1) **By the Clerk.** When the Plaintiff's claim against a defendant is for
15 a sum certain or for a sum which can by computation be made
16 certain, the clerk upon request of the plaintiff and upon affidavit of
17 the amount due shall enter judgment for that amount and costs
18 against the defendant, if the defendant has been defaulted for failure
19 to appear and if he is not an infant or incompetent person.

20 (2) **By the Court.** In all other cases the party entitled to judgment by
21 default shall apply to the court therefor...If the party against whom
22 judgment by default is sought has appeared in the action, the party
23 (or, if appearing by representative, the party's representative) shall
24 be served with written notice of the application for judgment at
25 least 3 days prior to the hearing on such application. If, in order to
26 enable the court to enter judgment or to carry it into effect, it is
27 necessary to take an account or to determine the amount of
28 damages or to establish the truth of any averment by evidence or to
29 make an investigation of any other matter, the court may conduct
30 such hearings or order such references as it deems necessary and
31 proper and shall accord a right of trial by jury to the parties when
32 and as required by an statute of the United States.

33 Defendants have made an appearance through their representative Huang Lee, by
34 requesting an extension of time within which to respond to the complaint. Despite receiving an
35 Extension of Time, however, Defendants failed to respond and Plaintiff is therefore entitled to

36 Alice N. Salas v. James Ji Enterprises, et al.
37 Civil Case No. 02-00002
38 Application for Default Judgment

1 Judgment by Default.

2 Plaintiff's damages are readily susceptible of determination, since she may testify as to the
3 amount of pay she received prior to and during jury service, and the amount of pay she received
4 following her jury service, once she was partially reinstated to a position with defendants. The
5 Court may determine, based on the reasonable expectations of Plaintiff, the amounts she would
6 have earned but for the wrongful conduct of the defendants in failing to reinstate her immediately
7 to her former position, in failing to reinstate her to a position with comparable hours, and in
8 creating a hostile work environment which made it impossible for Plaintiff to continue to work the
9 minuscule hours provided by Defendant even upon her tardy reinstatement. Her affidavit is
10 attached.

11 CONCLUSION

12 Defendants were served and appeared in this matter. They failed to file or serve an
13 Answer to the Complaint, despite having been granted an Extension of Time within which to do
14 so by this Court. Plaintiff is therefore entitled to a Judgment by Default, and the Court may
15 readily ascertain the amount of damages suffered by Plaintiff, based on her Affidavit, and her
16 testimony at a hearing on this Application.

17 Respectfully submitted this 16th day of May, 2002.

18 **BROOKS LYNCH & TYDINGCO LLP**

19 
20 Sandra D. Lynch, Esq.

21
22
23
24
25
26 Alice N. Salas v. James Ji Enterprises, et al.
27 Civil Case No. 02-00002
28 Application for Default Judgment